

## ORDINANCE NO. 07-01

### AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA ESTABLISHING A TRIBAL COURT

The Business Council of the Blue Lake Rancheria does hereby ordain as follows:

Section 1. Findings and Declaration. The Business Council of the Blue Lake Rancheria

("Tribe") finds and declares that:

1. Public Law 280, 28 U.S.C. §1360, did not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system.
2. The Courts of the State of California lack jurisdiction over many civil disputes and criminal acts that occur on the Tribe's Reservation.
3. The establishment of a Tribal Court which can exercise jurisdiction, as specified below, including over civil disputes and criminal acts occurring on the Tribe's Reservation, and those disputes and acts over which the courts of the State of California lack jurisdiction, is necessary to maintain peace and order on the Blue Lake Rancheria ("Reservation").
4. The adoption of this ordinance promotes the health and safety of the members of the Tribe, is in the best interests of the members of the Tribe and furthers the Tribe's administration of justice.

Section 2. Prior Inconsistent Codes and Ordinances Repealed: Any and all codes and ordinances of the Blue Lake Rancheria adopted prior to or which conflicts in any way with the

provisions of this Tribal Court Ordinance, are hereby repealed.

Section 3. Adoption of New Tribal Court Ordinance. A new Ordinance entitled "Tribal Court Ordinance" is hereby added to Title 11, Article 1, Chapter 1 of the Blue Lake Rancheria Tribal Code and shall provide as follows:

## **TITLE 11. COURTS**

### **ARTICLE 1. TRIBAL COURTS**

#### **CHAPTER 1. TRIBAL COURT ORDINANCE**

##### **Section:**

- 11.1.1.010 Definition
- 11.1.1.020 Establishment of Court and Peace Making Panel
- 11.1.1.030 Jurisdiction and Powers
- 11.1.1.040 Judges
- 11.1.1.050 Court Clerk
- 11.1.1.060 Court Procedures
- 11.1.1.070 Appeals
- 11.1.1.080 Appearances
- 11.1.1.090 Records
- 11.1.1.100 Peace Making Panel

11.1.1.010 Definitions. For the purpose of this ordinance the following words and phrases

shall have the following meanings:

- A. "Attorney" or "Counsel" shall mean any person admitted to a bar of any state.
- B. "Immediate Family" shall mean a person's natural father, natural mother, adoptive mother, adoptive father, daughter, son, spouse, person in a spousal relationship, brother, sister, stepbrother, and stepsister.
- C. "Peacemaker" shall mean a mediator who is a tribal member appointed to the Peace Making Panel by the Chief Judge of the Tribal Court.
- D. "Reservation" shall mean all lands within the exterior boundaries of the Blue Lake Rancheria.
- E. "Spokesperson" shall mean any person not admitted to a bar of any state who is a tribal member or a relative of a party and speaks for a party in a case filed in the Tribal Court.
- F. "Tribal Court" shall mean the court of the Blue Lake Rancheria unless the context indicates that another Tribe's court is intended.
- G. "Tribe" shall mean the Blue Lake Rancheria of California, a federally recognized Indian tribe.

11.1.1.020 Establishment of Court. There is established for the Tribe, a court to be known as the Blue Lake Rancheria Tribal Court. The Tribal Court shall be empowered to exercise the judicial authority of the Tribe as delegated herein and shall consist of two divisions, the Trial Court and the Court of Appeals.

A. The Court of Appeals shall consist of three judges, none of whom handled the matter at the trial court level.

B. The Trial Court shall consist of one (1) Chief Judge and such associate judges as the Business Council may appoint. The Tribal Court is empowered to create such specialized divisions as necessary to hear matters as defined in the Tribe's Ordinances.

C. In addition to the Trial Court and the Court of Appeal, there may be established a Peace Making Panel to arbitrate disputes between parties before trying the case in the Trial Court. The Peace Making Panel is an optional forum for peacefully resolving disputes and can be used only with the consent of all parties. Availability of the Peace Making Panel shall be authorized by the Chief Judge by referring the case to the Peace Making Panel after an action is filed in the Trial Court and the consent of the parties has been obtained by the Chief Judge. Parties utilizing the Peace Making Panel are not prohibited from continuing their case in the Trial Court should the Peace Making Panel fail to resolve the dispute to the satisfaction of all parties.

#### 11.1.1.030 Jurisdiction and Powers.

##### A. Civil Jurisdiction.

##### 1. Subject Matter Jurisdiction.

The Tribal Court shall have civil jurisdiction over all matters in law or in equity which the Business Council expressly authorizes by ordinance.

The Tribal Court may decline to exercise its jurisdiction if it finds any of the

following to exist:

(a) Another court has the jurisdiction to hear the case and would be more convenient for the parties than the Tribal Court;

(b) One or more of the parties is not a person over which the Tribal Court can exercise its authority; or

(c) The case is of such a nature that the Tribal Court should not hear it.

2. Territorial Jurisdiction:

The Tribal Court shall exercise civil jurisdiction as stated in subsection (1) over all causes of action that arise (1) on lands within the exterior boundaries of the Reservation and (2) on all lands owned by the United States of America in trust for the Tribe. Causes of action against the Tribe or tribally owned legal entities established under tribal law with their principal place of business or agent for service of process located on such lands shall be deemed to arise on such land, regardless of the location of the occurrence or transaction out of which the cause of action arises or the location of the party asserting the cause of action.

3. Personal Jurisdiction:

The scope of the Tribal Court's civil jurisdiction shall extend to the following:

(a) The Tribe;

(b) Legal entities owned by the Tribe;

(c) Persons or entities employed by the Tribe or its wholly owned legal entities;

(d) Persons or legal entities who have entered contracts with the Tribe or its wholly owned legal entities;

(e) Persons or entities doing business within the territorial jurisdiction of the Tribal Court;

(f) Tribal members;

(g) Anyone the Tribe formally recognizes as Indian;

(h) Other Indians;

(i) Anyone who consents to Tribal Court jurisdiction;

(j) Other individuals or entities whose conduct affects the ability of the Tribe to govern itself;

(k) all other individuals whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe.

4. Concurrent Jurisdiction:

(a) The Business Council recognizes that Public Law 83-280 granted concurrent jurisdiction to the State of California over some criminal and civil matters on the Reservation. The Tribal Court shall exercise its jurisdiction in all areas to the extent delegated by

Tribal ordinance.

(b) Criminal Jurisdiction.

(i) The Tribal Court shall have jurisdiction over all offenses set forth in the Tribe's Law and Order Ordinance when committed by an Indian within the exterior boundaries of the Reservation or on any land owned by the United States of America in trust for the Tribe.

(ii) For purposes of this subsection (b), an Indian shall be any person of Indian decent who is a member of any federally recognized Indian Tribe.

(c) Powers.

The Tribal Court is granted all the powers necessary to exercise its jurisdiction in accordance with the procedures set forth in this Ordinance. Additionally, the Tribal Court may exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures are in accordance with the Tribe's Constitution. The Chief Judge, in consultation with the Business Council, shall promulgate such rules of procedure as are necessary for the efficient prosecution or processing of cases through the Tribal and Appellate Courts.

(d) Full Faith and Credit.

The Tribal Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and local governments unless:

- (i) The Court in question does not recognize the orders and judgments of the Tribal Court;
- (ii) The Court in question did not have jurisdiction over the case or a party or parties to it;
- (iii) The order or judgment was based on fraud;
- (iv) Giving full faith and credit to the judgment of the court in question would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or
- (v) The order or judgment is on appeal or being contested in another jurisdiction.

#### 11.1.1.040 Judges.

##### A. Qualifications.

1. Chief Judge: The Chief Judge and any person appointed to the Court of Appeals shall be a graduate of an accredited law school who is an attorney at law licensed to practice law in any state, tribal or federal court with not less than seven (7) years experience practicing law, including as a judge, with demonstrated knowledge of federal Indian law.

2. Associate Judge: The Associate Judge shall have the same qualifications as the Chief Judge, but with not less than three (3) years experience.

No persons shall serve as Judge of the Trial Court or Court of Appeal who has been



convicted of: (1) a felony at anytime or (2) misdemeanor involving a crime of moral turpitude within the last three years. No person shall serve as a Judge of the Trial Court or Court of Appeal until a bond has been posted, at tribal expense, in an amount determined by the Business Council or, until the person is covered by a blanket bond provided for all tribal employees. No person shall serve as a Judge of the Trial Court or the Court of Appeal who holds any elective office of the Tribe.

B. Appointment and Term of Service.

After advertisement and interviewing by the Business Council, the Business Council will select the most qualified applicant for the position of Chief Judge and Judges to the Court of Appeal. Preference will be given to Tribal members first and Indians of other federally recognized tribes second. The terms of offices will be two (2) years and will include a six (6) month probationary period.

C. Duties.

1. Chief Judge.

The Chief Judge will be responsible for:

- (a) Developing rules of civil procedure and evidence for the efficient operation of the Tribal Court, subject to approval by the Business Council;
- (b) Hearing all matters delegated to the Court by ordinance;
- (c) Development and maintenance of a list of Acting Judges to be called

upon to hear cases in the event of disqualification of a judge or as deemed necessary. The list shall always contain three qualified acting judges;

(d) Development and maintenance, with the assistance of the Clerk of the Court, of a system for record keeping and a docket system;

(e) Maintenance of legal research resources;

(f) Preparation of the Court's annual plan and budget;

(g) Issuing receipts for any monies collected or paid out by the Tribal Court;

(h) Depositing all receipts into the Tribal accounting system earmarked for inclusion in the Tribal Court's annual plan and budget, and

(i) Supervising and coordinating training of Court personnel and peacemakers.

2. Associate Judge.

The Associate Judge will be responsible for hearing all cases as are assigned by the Chief Judge and other duties as assigned by the Chief Judge.

3. Judges to the Court of Appeal.

The Judges to the Court of Appeal shall perform those duties set forth in a separate Ordinance adopted by the Business Council for that purpose.

D. Removal.

During the tenure of his or her appointment, any Judge may be suspended, dismissed, or removed for cause by the Business Council by a three fourths (3/4) vote of the Business Council. The Tribal Chairperson or his/her designate shall make available copies of a written statement setting out the facts and reasons for the proposed action to the Judge in question, the other Judges, and to members of the Business Council at least fourteen (14) calendar days before the next regularly scheduled meeting of the Business Council at which the charges shall be presented. The Secretary of the Business Council shall give notice of the hearing to the Judge by personal service and to the Tribal Membership by posting a notice of the date, place and time of the hearing at the Business Council office and at, at least, two other conspicuous places on the Reservation. The meeting shall be a public hearing where the accused Judge shall be given an adequate opportunity to answer any and all charges. Causes deemed sufficient for such action shall directly relate to the performance of the duties of the judge as set forth in this Ordinance, the rules governing judicial conduct adopted by the Court, and other applicable tribal ordinances or rules of the Court. Such causes may include but are not limited to: excessive use of intoxicants or legal drugs, use of any illegal drug, conviction of any felony or other offense involving moral turpitude, use of official position for personal gain, or failure to perform judicial duties adequately in accordance with the terms of this ordinance. No Judge shall be removed from office for exercising his/her discretion or for making a particular decision in a case. The decision of the Business Council shall be final, unless a Court of Appeal is established in which case, the Business

Council decision may be appealed by filing a notice of appeal not later than 30 days after the decision has been served on the judge. The Court of Appeal shall determine whether the removal was based on proper grounds as set forth herein and whether the decision is supported by substantial evidence in light of the whole record before the Business Council. The appeal shall be conducted in accordance with procedures set forth in an appropriate ordinance or rules adopted in compliance with this Ordinance.

E. Disqualification.

1. Conflict of Interest.

No Judge shall be qualified to hear any case where (1) she/he has any direct interest, (2) any party involved in the case includes a relative by marriage or blood in the first or second degree, (3) for any other reason the judge cannot be impartial; or (4) the judge finds that a reasonable person would believe that he or she could not be impartial. A Judge may be disqualified upon his/her own motion or by application by any party in the proceeding upon filing a verified motion in writing.

2. Bias or Prejudice.

Upon the filing of an affidavit by a party setting forth facts establishing that by reason of bias or prejudice of the Judge to whom the case is assigned, the party cannot have a fair trial, the Judge shall disqualify himself/herself. Such affidavit must be filed not less than five days prior to the first hearing in the case in which the Judge may be required to make a ruling or

decision. Each party shall be entitled to only one (1) preemptory challenge to disqualify a judge under this section in each case and waives that right, if the affidavit is not filed within the time required herein.

F. Acting Judges.

In the event that there is no qualified Judge or there are an insufficient number of Judges available to hear a particular case, the Chief Judge shall appoint the Acting Judge or Acting Judges selected by random drawing from the Temporary Judge list, with the full powers of a regularly-appointed Tribal Judge to hear and dispose of the case. The qualifications for Temporary Judges must meet the minimum qualification of Associate Judges. Such appointment shall be only for the period of time necessary to dispose of the case in question..

G. Compensation.

The Chief Judge, Judges of the Court of Appeal and Associate Judges shall be compensated at a rate and under such terms and conditions as the Business Council shall from time to time establish by resolution adopted pursuant to this Ordinance.

11.1.1.050 Court Clerk.

A. Appointment.

The Court Clerk shall be appointed as provided by a Tribal Court Personnel Policies and Procedures Manual which shall be adopted by the Chief Judge and approved by the Business Council.

B. Qualifications.

The Court Clerk shall have a high school diploma or the equivalent thereof; have a minimum of two years experience as a paid secretary or paid Clerk; be eligible to become a registered notary and shall not have been convicted of a felony or any other crime involving dishonesty within the last three (3) years. There shall be preference in hiring Tribal members first and members of other federally recognized tribes second. There will be a three (3) month probationary period after hiring.

C. Duties.

The Court Clerk shall not give legal advice to any person but shall:

1. In accordance with court rules and applicable ordinances of the Tribe, file all documents presented to the Court for filing, and maintain court records;
2. Attend all sessions of the Trial Court;
3. Keep a record of all proceedings of the Trial Court;
4. Administer oaths to witnesses;
5. Collect all fines and deposit them as directed by the Chief Judge pursuant to this Ordinance;
6. Pay out all fees ordered and accounted for pursuant to this Ordinance;
7. Account for all monies handled through the Trial Court; and
8. Any other duties as directed by the Chief Judge.

D. Bond.

The Clerk shall be bonded, at Tribal expense, in an amount determined by the Chief Judge.

E. Seal.

The Court Clerk shall have an official seal which shall be impressed upon the original of each complaint or other paper filed with the Tribal Court, along with a notation of the day and time of filing.

F. Clerk of the Court of Appeals.

The Clerk of the Tribal Court shall act as the Clerk of the Court of Appeals unless otherwise provided by the Business Council by separate ordinance. The duties of the Clerk of the Court of Appeals shall be set forth in a separate ordinance adopted by the Business Council for that purpose.

Section 11.1.1.060 Court Procedures.

A. Civil Procedures

Trial Court and Court of Appeal procedures will be developed by the Chief Judge, in consultation with legal counsel designated by the Business Council, and subject to approval by the Business Council.

When choosing what law applies, the Tribal Court shall apply the law of the Tribe. In the absence of applicable tribal law, the Court shall use as guidance the laws of the State of

California, the laws of other federally recognized Tribes and federal law, but shall follow federal and state laws, if required by tribal or federal law.

B. Criminal Procedures. [Reserved.]

Section 11.1.1.070 Appeals.

A. Court of Appeals. The Business Council may by separate ordinance establish a Court of Appeal consistent with the provisions of this Ordinance. Until the Business Council adopts a separate Ordinance establishing a Court of Appeal and providing for its scope of review, the decisions of the Trial Court shall be final and non-appealable.

B. Jurisdiction. Upon the adoption of an ordinance, as described in subsection A, above, the Court of Appeal shall have jurisdiction to review final orders, commitments, and judgments of the Trial Court; provided that the "one final judgment" rule applies. An appeal will only lie from a judgment, order or decree that finally disposes of all claims and defenses in the case. On appeal, the record and decision of the Trial Court shall be reviewed for error. The Court of Appeals may affirm, modify, or reverse any judgment, decree, or order of the Trial Court; may remand the case and order for new trial; may direct the entry of an appropriate judgment, decree or order; or require such other action or further proceedings as may be just in the circumstance. A decision must be by a majority of the judges hearing the appeal.

C. Right to Appeal. Any party who is aggrieved by the final order, commitment, or judgment of the Trial Court may appeal.



D. Notice of Appeal. Within thirty (30) days from the entry of the judgment or order appealed from, the aggrieved party must file a written notice of appeal with the Trial Court. No extension of the thirty day period shall be granted. Bond or assurance must be posted in accordance with Section 1.070(E) and any filing fee required by Court Rules must be paid in order for the filing of the notice to be effective.

E. Bond. Upon filing the notice of appeal, the appellant must post bond, deposit cash, or give other assurance as will in the judgment of the Trial Court judge give adequate assurance of the performance of the judgment, or payment of the fine or judgment in the event the case appealed is affirmed. The Trial Court judge has discretion to waive bond, if it would be an undue hardship to the appellant and frustrate the interests of justice or is not required to assure performance of the judgment.

F. Stay of Enforcement.

In any case where a party has perfected his/her right to appeal in accordance with the rules set forth in this Ordinance, or the Rules of Court, the final order, commitment or judgment of the Trial Court shall be stayed pending the appeal.

G. Appellate Procedure

Within ninety (90) days of the date written notice of appeal is filed with the Trial Court, the Court of Appeal shall convene to hear the case on appeal at such place as may be designated. The Court's procedure shall be as provided in the Rules of Court developed and

approved by the Chief Judge for that purpose.

H. Finality.

The decision of the Court of Appeal shall be final.

The provision for disqualification of Judges at Section 1.040(E) shall apply to appellate judges for purposes of this Section 1.070.

Section 11.1.1.080 Appearances.

A. Counsel or Spokesperson.

1. Counsel

Any party has a right to assistance of counsel at the party's expense. Such assistance shall be arranged by the party. If Counsel is required to pay a fine as a result of being held in contempt of court, and fails to pay the fine within the time provided in a court order, his or her license to practice before the Court shall be suspended and he or she may not thereafter practice in or appear before the Court, until the fine, and any applicable penalties and interest, are paid in full.

2. Spokesperson.

Any party has a right to assistance of a spokesperson at the party's expense. The spokesperson shall be required to comply with all Ordinances and Rules adopted by the Trial Court for the processing of cases.

The Court shall not appoint counsel or a spokesperson for any party at the Tribe's

expense.

B. Self-representation.

Any individual party may appear and represent himself or herself in any proceeding before the Tribal Court. Judges of the Tribal Court shall insure that all parties have equal opportunity to present their case and cross-examine opposing witnesses. Parties representing themselves shall be held to the same strict standards of conduct as are required of legal counsel.

C. Witnesses.

1. Summons to Appear.

On motion by any party to the case, or on the Trial Court's own motion, the Trial Court shall issue a summons to compel the attendance of witnesses, or the production of books, records, documents, paper and things necessary to the determination of the cause. Failure to comply with a summons shall constitute contempt of court.

2. Fees for Witnesses.

Each party shall be responsible for his/her own witnesses. The Tribe shall pay witnesses summoned on its behalf at a rate established by the Court.

Section 11.1.1.090 Records.

A. Docket.

The Court Clerk shall keep a docket which shall contain the names of and contact information for each party in any civil or criminal proceeding, the type of proceeding, and the date

and nature of each filing, order or proceeding in the case, the date and the amount of any judgment, appeal, and all other proceedings and documents as directed by the Chief Judge. The Court docket shall be posted in a public place, including a website, if established by the Court.

B. Copies of proceedings.

Any party may obtain a certified copy of proceedings in the Tribal Court at their own expense; the seal of the Court Clerk shall be applied to all copies so certified. The preceding shall not apply to matters or records sealed or expunged by the Tribal Court as permitted by this Ordinance or Federal law.

C. Copies of Laws.

The Tribal Court shall obtain copies of this Ordinance and copies of tribal ordinances, federal, and state laws and regulations as are deemed by the Tribal Court to be necessary, helpful, and proper to secure the rights and privileges of persons subject to the jurisdiction of the Tribal Court and its judicial powers and responsibilities. Copies of same shall be available for review by the public.

Section 11.1.1.100 Peace Making Panel.

A. Purpose.

The purpose of the Tribe's Peace Making Panel is to provide a non-adversarial way to resolve disputes. The Panel is intended to reflect the Tribe's tradition of using respected members of the community to heal conflicts among its members.

B. Appointment.

The Business Council, with the advice of the Chief Judge, may appoint one or more peacemakers to carry out the duties and responsibilities set forth in this Ordinance and refer a case to the Peace Making panel.

C. Qualifications.

Peacemakers shall be members of the Tribe, and known and respected in the community. No peacemaker shall serve who has been convicted of a misdemeanor involving violence or of a felony within the last three (3) years, unless the felony resulted from the failure to register for the selective service or as the result of a violation of the California Vehicle Code and did not result in the injury or death of a third person.

D. Duties.

Peacemakers shall work to resolve disputes between family members and neighbors and any others provided for by Tribal ordinances. To do this, peacemakers shall, as needed, do the following:

1. Conduct informal conferences.
2. Insure in each conference that all relevant facts are presented and that all parties have an opportunity to speak.
3. Encourage the parties to reach an agreement that is acceptable to all of them.

4. Attend training at Tribal Court expense as requested by the Chief Judge.

E. Procedure.

1. Any party to a case filed with the Tribal Court who wishes to have a peacemaker conference shall file and serve on all parties a request for conferences with the Court Clerk. Within ten (10) days of the date of filing of the request, if no party has filed an objection to the request, the Tribal Court Judge shall refer the case to the peacemaking panel for settlement.

2. A peacemaker shall then contact the parties to schedule a peacemaker conference and explain the basic rules of the conference. If a party after hearing said explanation, objects to holding a conference, the peacemaker shall not hold it. If the parties do not agree on a peacemaker, the Chief Judge shall designate a peacemaker.

3. If the nonmoving party agrees to a conference, the peacemaker shall send written notice of it to the parties. The notice shall contain:

- a. The names of the parties.
- b. The date, time, and place of the conference.
- c. The allegation(s) and a brief statement of the alleged facts on which it is based.

- d. a brief description of how the peacemaker conference works.

- e. If there is no agreement on a peacemaker among the parties, the Chief Judge shall designate a peacemaker.

F. Representation.

No party to a peacemaking conference may be represented by counsel. A party may only be represented by a spokesperson to the extent necessary for the party to understand the nature of the proceedings.

G. Appeal.

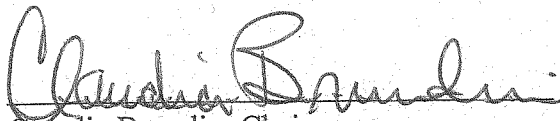
A party aggrieved by the decision of the peacemaker may appeal to the Trial Court. The Tribal Court shall hear the case as if it were initiated in the Trial Court, provided, however, that it shall take notice of the peacemaker's decision.

Section 3. Effective Date. This Ordinance shall become effective immediately upon passage.

CERTIFICATION


This ordinance shall supercede all ordinances, and resolutions, that attempt to establish a tribal court. The foregoing ordinance was adopted at a regular meeting of the Business Council of the Blue Lake Rancheria held on February 27, 2007, by the following vote:

AYES: 4  
NOES: 0  
ABSTAIN: 0  
ABSENT: 1

  
Claudia Brundin, Chairperson

2-26-07

ATTESTED TO:

  
Melanie Shelanskey, Tribal Secretary

2-26-07